



September 14, 2001

Mr. Robert E. Hager  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2001-4119

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151967.

The City of Terrell (the "city"), which you represent, received a request for an internal affairs file kept by the police department. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted. We also received comments from the requestor. *See* Gov't Code § 552.304 (providing that interested person may submit written comments stating why requested information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential. You assert that the requested information is confidential under section 143.089 of the Local Government Code.<sup>1</sup> Section 143.089 contemplates two different types of personnel files, including one that must be maintained as part of a police officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *See id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary

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<sup>1</sup>You inform this office that the city is a civil service municipality under chapter 143 of the Local Government Code.

actions: removal, suspension, demotion, and uncompensated duty. *See id.* §§ 143.051-.055. However, documents relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See id.* § 143.089(b)-(c).

Subsection (g) of section 143.089 authorizes but does not require the police department to maintain for its use a separate and independent internal personnel file relating to a police officer. Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

*Id.* § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *See City of San Antonio*, 851 S.W.2d at 949 (concluding that "the legislature intended to deem confidential the information maintained by the . . . police department for its own use under subsection (g)"). Thus, if a police department takes disciplinary action against a police officer under chapter 143, section 143.089(a)(2) requires that records relating to the investigation and disciplinary action be placed in the personnel file maintained under section 143.089(a). The records encompassed by section 143.089(a) are subject to public disclosure under chapter 552 of the Government Code, unless an exception to disclosure is shown to apply. *See Local Gov't Code* § 143.089(f); *City of San Antonio*, 851 S.W.2d at 948-49; Open Records Decision No. 562 at 6 (1990). Section 143.089(g) provides that a department that receives a request for information relating to a police officer "may not release any information contained in the department file" maintained under section 143.089(g) and must "refer to the director [of the civil service commission] a person or agency that requests information that is maintained in the . . . police officer's personnel file." *See also City of San Antonio v. San Antonio Express-News*, \_\_\_ S.W.3d \_\_\_, 2000 WL 1918877 (Tex. App. - San Antonio 2000, no pet. h.) (restricting confidentiality under section 143.089(g) to "information reasonably related to a police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 (2000) (addressing functions of section 143.089(a) and (g) files).

In this instance, the requestor seeks access to an "internal affairs file (investigation) . . . kept by the Terrell Police Department." You represent to this office that the requested records are part of the police department's personnel file. Based on this representation and our review of these records, we conclude that they are confidential under section 143.089(g) of the Local Government Code. We note that an individual who is the subject of information held in a section 143.089(g) file has no right of access to the information. See Open Records Decision No. 650 at 3 (1996) (stating that section 143.089(g) contains no exception to prohibition against releasing "any information contained in the department file to any agency or person"). Thus, the city must withhold the submitted information under section 552.101 of the Government Code. As we are able to make this determination under section 552.101, we need not address your arguments under section 552.103.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

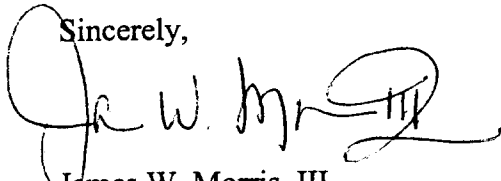
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a stylized "M".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 151967

Enc: Submitted documents

c: Mr. Ronald E. Breathwit  
304 Goss Street  
Terrell, Texas 75160  
(w/o enclosures)